

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL STRASTERS and ZADELLE
STRASTERS,

Plaintiffs,

V.

WEINSTEIN & RILEY, P.S.

Defendant.

NO. CV-10-3070-RHW

ORDER DENYING RECONSIDERATION

Defendant moves for reconsideration of the Court's September 13, 2011 order granting Plaintiffs' motion to compel. Finding the matter suitable for disposition without oral argument, the Court denies the motion.

STANDARD

Brought under FRCP 59(e), motions for reconsideration are sparingly granted. They are proper only when the moving party presents newly discovered evidence or demonstrates that the Court committed clear error, or if there is an intervening change in the controlling law. Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). Only when a manifest error overcomes the interests of finality and conservation of judicial resources should such a motion be granted.

ANALYSIS

The parties filed cross-motions to compel, each alleging the other was late in answering discovery requests and improperly withholding responsive documents.

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1 Plaintiffs' briefing indicated that they served their request on Defendant on May 19,
 2 2011, and that Defendant did not answer until June 22, 2011. ECF No. 85, at 1.
 3 Partially based on the dates given in Plaintiffs' briefing, the Court held that
 4 Defendant's tardy response waived applicable privileges. The Court also noted that
 5 Defendant did not provide a privilege log with their objections, finding this to be an
 6 alternative ground for denying the use of privilege. The Court ordered Defendant to
 7 produce the discovery requested. Implicit in the Court's order was its finding that the
 8 materials Plaintiffs seek are relevant.

9 In its motion for reconsideration, Defendant argues that the discovery requests
 10 were served on May 24, not May 19, and that its June 22 response was within the time
 11 frame required by federal rule. They did not raise this at hearing or in their response
 12 to Plaintiffs' motion, ECF No. 94, although attached to the pending motion is a copy
 13 of Plaintiffs' request, dated May 24, 2011. Based on the apparent timeliness of their
 14 discovery response, Defendant asked the Court to reconsider its position.

15 However, Defendant does not address at all the Court's alternative holding:

16 Moreover, both parties failed to provide a privilege log, another basis for
 17 the Court to decline to apply the privilege. *See BNSF Ry. Co. v. U.S.*
Dist. Ct., Dist. of Mont., 408 F.3d 1142, 1149-50 (9th Cir. 2005)
 18 (privileges waived where party produced privilege log five months late).
 19 Rule 26(b)(5), Fed. R. Civ. Pro., provides that when a party withholds
 20 information that is otherwise discoverable by claiming privilege, as both
 21 parties have, "the party must expressly make the claim and describe the
 22 nature of the documents, communications, or things not produced or
 23 disclosed in a manner that . . . will enable other parties to assess the
 24 applicability of the privilege or protection." They have not done so here.

25 ECF No. 100, at 3. Indeed, Defendant does not assert that it produced a privilege log
 26 as required by FRCP 26(b)(5).

27 Therefore, Defendant cannot demonstrate the manifest error necessary to
 28 prevail on reconsideration. The Court denies the motion.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Reconsideration (ECF No. 102) is **DENIED**.

3 2. Defendant's Motion to Expedite (ECF No. 104) is **DENIED, as moot**.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter this

5 Order and forward copies to counsel.

6 **DATED** this 28th day of September, 2011.

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8 *s/Robert H. Whaley*
9 ROBERT H. WHALEY
10 United States District Judge

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